

**United States District Court**  
**EASTERN DISTRICT OF TEXAS**  
**SHERMAN DIVISION**

LINTON J. GRIFFIN	§	
	§	CIVIL ACTION NO. 4:23CV411
V.	§	JUDGE MAZZANT/JUDGE JOHNSON
	§	
INOGEN	§	
	§	

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On August 9, 2024, the Magistrate Judge entered a Report and Recommendation (Dkt. #22) that Defendant Inogen’s Second Motion to Dismiss Under Rule 12(b) and Brief in Support (the “Motion”) (Dkt. #15) be granted in part and denied in part.

Having received the report of the United States Magistrate Judge, and no timely objections being filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge’s report as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that Defendant’s Motion (Dkt. #15) is **GRANTED IN PART** and **DENIED IN PART**.

**IT IS FURTHER ORDERED** that the Motion (Dkt. #15) is **DENIED** to the extent it seeks dismissal based on Plaintiff Linton J. Griffin’s failure to exhaust his administrative remedies, **DENIED** with respect to Plaintiff’s claims of disparate treatment based on his race, retaliatory discharge, and hostile work environment based on his race, and **DENIED AS MOOT** to the extent it seeks dismissal of Plaintiff’s claims under Rule 12(b)(5).

**IT IS FURTHER ORDERED** that the Motion (Dkt. #15) is **GRANTED** as to Plaintiff’s claims of retaliation, disparate treatment based on gender, and hostile work environment based on

gender, excluding his retaliatory discharge claim identified above, for failure to state a claim upon which relief can be granted. These claims are hereby **DISMISSED WITHOUT PREJUDICE**, and Plaintiff is granted leave to file an amended complaint, rectifying the deficiencies identified by the Report and Recommendation (Dkt. #22) no later than fourteen (14) days after the entry of this Memorandum Adopting Report and Recommendation. If Plaintiff fails to timely file an amended complaint, these claims will be dismissed with prejudice.

**SIGNED this 4th day of September, 2024.**

  
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AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE